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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re A.L., a Person Coming Under the
Juvenile Court Law.

2d Juv. No. B208068
(Super. Ct. No. J066484)
(Ventura County)

VENTURA COUNTY HUMAN
SERVICES AGENCY,

Plaintiff and Respondent,

v.

K. L. and F. L.,

Defendants and Appellants.

K.L. (mother) and F.L. (father) appeal the order of the juvenile court terminating their parental rights to their son, A.L., and establishing adoption as a permanent plan. (Welf. & Inst. Code, § 366.26.)¹ The sole issue on appeal is whether the Human Services Agency (Agency) complied the Indian Child Welfare Act (ICWA) notice requirements. (25 U.S.C. 1901 et seq.; Welf. & Inst. Code, § 224 et seq.; Cal. Rules of Court, rule 5.480 et seq.) The Agency made four separate attempts at notice, which it acknowledged were incomplete. However, we conclude the information

¹ All further statutory references are to the Welfare and Institutions Code.

contained in the fifth notice substantially complied with ICWA notice requirements. We affirm.

FACTS

A.L., and his sister, M.L., share the same birth parents. M.L. was detained in 2005. Following the juvenile court's termination of parental rights to M.L., the parents appealed. We ordered a limited reversal of the order terminating parental rights for a determination of whether ICWA applied and reinstatement of the order if ICWA compliance did not indicate Indian ancestry. (*Ventura County Human Services Agency v. Frankie L.* (May 19, 2008, B202033) [nonpub.opn.].) The Agency conceded that reversal of the order terminating parental rights to M.L. was necessary for compliance with ICWA.

A.L. was detained at the hospital on December 26, 2006, the day he was born. This appeal concerns only A.L. We refer to M.L. because it appears the Agency named both children in its final notification to the tribes, and the juvenile court properly relied on documents in M.L.'s file to determine that ICWA compliance had been met as to A.L.

In December 2006, the parents completed a Parental Notification of Indian Status form (JV-130), as to A.L. Mother indicated membership or possible eligibility with the Cherokee tribe in Oklahoma, and father named the Pawnee tribe.

The Agency sent Notice of Child Custody Proceedings for an Indian Child (JV-135) which it acknowledged were incomplete. Those notices were mailed on January 18, 2007, September 17 and November 21. County counsel subsequently learned at a hearing that maternal grandmother was of Apache Indian ancestry. On December 10, the Agency again sent notice which identified the maternal grandmother as Darling Hardison and indicated that she was born in Roosevelt, Utah.

On February 22, 2008, the Agency made a fifth attempt, sending Notice of Child Custody Proceedings (formerly form JV-135, now form ICWA-030), to the parents, the BIA, eight Apache tribes, three Cherokee tribes and the Pawnee tribe. This notice, filed February 26, referred to both A.L. and his sibling, M.L. Maternal

grandmother was identified as Darling Hardison, her birth date was listed, including the information that she was born on federal land in Roosevelt, Utah.

On April 22, 2008, the Agency filed a memorandum regarding ICWA notification for A.L. It stated that all tribes had confirmed receipt of the Notice of Involuntary Child Custody Proceedings by either USPS or Green Card Confirmation. Attached to the Agency's memorandum were executed return receipts from 11 tribes and the BIA. A return receipt for the Mescalero Apache Tribe, that had not been executed, was attached. Also included were letters from six tribes indicating that A.L. was not eligible for enrollment.²

On April 30, 2008, the court held A.L.'s contested section 366.26 hearing. The court considered ICWA compliance first and reviewed the Agency's April 22 memorandum. Mother objected, stating that the notice was insufficient as to maternal grandmother. County counsel indicated that it had personally taken the information from maternal grandmother at another hearing and believed the data was complete. The trial court pulled M.L.'s files and reviewed the green cards, return receipts and letters. It checked the Federal Register to determine the federally-recognized Apache tribes, and concluded that ICWA notice had been given and that ICWA did not apply. It terminated the parental rights to A.L. and established adoption as the permanent plan.

DISCUSSION

Mother and father filed separate briefs, with mother joining in the arguments raised by father. We address their contentions together. Our task on appeal is to determine whether the juvenile court's finding, that ICWA notice was adequate, is supported by substantial evidence. (*In re H.B.* (2008) 161 Cal.App.4th 115, 119-120; *In re J.T.* (2007) 154 Cal.App.4th 986, 991.) Errors in ICWA notices are subject to review under a harmless error analysis. (*In re Brandon T.* (2008) 164 Cal.App.4th 1400, 1414; *In re Alexis H.* (2005) 132 Cal.App.4th 11, 14.)

² Letters were received from the White Mountain Apache Tribe, the Cherokee Nation, the Tonto Apache Tribe, the United Keetoowah Band of Cherokee Indians, the Jacarilla Apache Nation and the Eastern Band of Cherokee Indians.

ICWA sets forth procedural and substantive standards regarding Indian children in state dependency proceedings. (25 U.S.C. 1901 et seq.; *In re H.A.* (2002) 103 Cal.App.4th 1206, 1210.) California recognizes ICWA's notice requirements, both in statutes and by court rule. (See § 224 et seq.; Cal. Rules of Court, rule 5.480 et seq.) It is intended to prevent an Indian child's involuntary out-of-home placement by locating a placement that reflects the child's tribal culture. (§ 224; *In re J.T.*, *supra*, 154 Cal.App.4th 986, 991.)

If the court or social worker has notice that a child may have Indian ancestry, notice must be sent to the minor's parents, to all tribes of which the child may be a member or eligible for membership, the Indian custodian (if any) and the BIA. (§ 224.2, subd. (a)(3) & (4).) Notice shall be sent by registered or certified mail with return receipt requested. (§ 224.2, subd. (a)(1).) Copies of the notices sent, return receipts and responses received shall be filed with the court. (§ 224.2, subd. (c).) If neither a tribe nor the BIA provides a determinative response within 60 days after receiving adequate notice, the court may determine that ICWA does not apply. (§ 224.3, subd. (e)(3).) Notice must contain enough information to permit the tribe to conduct a meaningful review of its records to determine the child's eligibility for membership. (*In re Cheyanne F.* (2008) 164 Cal.App.4th 571, 576.)

The parents' primary arguments are that (1) the final notice incorrectly stated that the maternal grandmother's first name was "Darling" rather than Darlene; and (2) that there is a ninth federally-recognized Apache tribe, which did not receive notice.

On February 10, 2009, we granted the Agency's request to augment the record with documents indicating that maternal grandmother's first name is "Darling." This included two documents in which maternal grandmother signed her name as Darling Hardison. There is nothing in the record to support the assertion that mother's first name is Darlene. The Apache tribe had before it all the required information: the maternal grandmother's name, date of birth, place of birth and her name. If there was any error as to her true first name, it was harmless. The other identifying information was sufficient to have allowed the Apache tribe to conduct a meaningful review of their records.

The parents argue that notice was not sent to the Fort McDowell Yavapai tribe, which consists of both Yavapai and Apache peoples, and is a federally-recognized tribe. In support of their assertion, they direct us to a website for Northern Arizona University. There is simply no basis for their argument. Their challenge to notice of the Mescalero Apache tribe is likewise meritless because the augmented record indicates that the tribe received notice.

We also reject the parents' argument that the notice should have included the information that the maternal grandfather's grandmother was one-eighth Cherokee. Such a remote connection would not constitute a reason to know that A.L. was a Cherokee Indian child. No duty of further inquiry was required. The juvenile court's finding that ICWA notice had been given is supported by substantial evidence.

The order terminating parental rights is affirmed.

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COFFEE, J.

We concur:

YEGAN, Acting P.J.

PERREN, J.

Tari L. Cody, Judge
Superior Court County of Ventura

Lee Gulliver, under appointment by the Court of Appeal for Defendant and Appellant, F.L.

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